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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,775	10/15/2001	Dianne D. Mueller	US20010143	3779

173 7590 09/22/2004

WHIRLPOOL PATENTS COMPANY - MD 0750
500 RENAISSANCE DRIVE - SUITE 102
ST. JOSEPH, MI 49085

EXAMINER

CIRIC, LJILJANA V

ART UNIT PAPER NUMBER

3753

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,775

Applicant(s)

MUELLER ET AL.

Examiner

Ljiljana (Lil) V. Ciric

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June & 2 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) none is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☒ Claim(s) 21-26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. This Office action is in response to the replies filed on November 13, 2003, on March 2, 2004 and on June 30, 2004.
2. Original claims 1 through 26 remain in the application.

Response to Arguments

3. Applicant's arguments with respect to claims 1 through 26 have been considered but are moot in view of the new grounds of rejection.

It is hereby noted by the examiner that the information provided by applicant via the replies filed on June 30, 2004, March 2, 2004, and November 13, 2003 at the examiner's request has obviated the rejections of the claims as cited in the previous Office action.

Claim Rejections - 35 U.S.C. § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an

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international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1 through 4 and 16 through 20, are rejected under 35 U.S.C. 102(e) as being anticipated by *Clark et al. (of record)*.

Clark et al. discloses a combination cooling and cooking appliance 20 essentially as claimed, including, for example, a door 48 movably mounted to cover and uncover a first access opening corresponding to the oven or cooking chamber 28, a heat element or heating unit 50 disposed within the cooking chamber or oven 28, an inlet duct 80 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28, a return duct 84 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28, a refrigeration module or unit 70 including a compressor 76, a condenser 90, an evaporator 78 mounted inside a housing as shown in Figure 4, with the evaporator housing as mounted thus being at least somewhat inherently thermally insulating with respect to both the condenser 90 and with respect to the base because of the air-filled (and thus inherently insulative) housing surrounding the evaporator. A second access opening through which access to the interior of refrigeration module or unit 70 is provided corresponds to the opening in which drawer 68 is disposed, this opening receiving and thus being sized to receive the refrigeration module or unit 70.

The reference thus reads on the claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 5 through 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Clark et al.*

As discussed in greater detail above, *Clark et al.* discloses a combination refrigerated oven or range appliance 20, including an inlet duct 80 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28 and a return duct 84 extending between the refrigeration module or unit 70 and the cooking chamber or oven 28. However, *Clark et al.* does not specifically disclose the ducts connecting the refrigeration module or unit 70 and the oven or cooking chamber 28 as either extending through a peripheral wall of the cooking chamber 28 or as having openings to the cooking chamber 28 which are spaced relative to each other and otherwise located as recited in claims 5 through 15 of the instant invention. Nevertheless, absent unexpected results therefrom, shifting location of parts is generally a matter of design choice and thus not inventive. See *In re Japikse*, 86 USPQ 70 (CCPA 1950).

Thus, it would have been obvious to one skilled in the art at the time of invention to modify the combination appliance of *Clark et al.* by, for example, placing the inlet and outlet ducts in a peripheral wall in order to save space and/or in order to be able to circulate cooling air through the cooking chamber or oven 28 in a particular pattern. For example, placing the outlet of the cooling air inlet duct near the top wall of the cooking chamber or oven 28 allows warm air

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which has risen within the chamber or oven 28 to more readily flow into the inlet duct when the combination appliance is run in a cooling mode.

Clark et al. also does not explicitly disclose the walls between the compartments of the combination appliance nor the walls of the housing of the combination appliance as comprising insulation, but Official Notice is taken hereby that it is well known in the art of designing both cooking ranges/ovens and refrigerators to insulate the walls of the housings of the appliances in order to prevent the exterior of the respective appliances from being either extremely hot or extremely cold to the touch and to maximize the efficiency of the appliances. Thus, it would have likewise been obvious to one skilled in the art at the time of invention to modify the combination appliance of *Clark et al* by insulating the walls thereof in order to maximize the efficiency of the appliance while also increasing user safety and comfort.

Allowable Subject Matter

9. Claims 21 through 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The additional prior art made of record and not relied upon is considered pertinent to applicant's disclosure. In particular, the prior art further supports applicant's position that the POLARA refrigerated range of the instant invention was first introduced to the public no earlier than 2001.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ljiljana (Lil) V. Ciric, whose telephone number is (703) 308-3925. Applicant is encouraged to contact the examiner for clarification of any portion of this Office action if needed.

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While she works a flexible schedule that varies from day to day and from week to week, Examiner Ciric may generally be reached at the Office during the work week between the hours of 10 a.m. and 6 p.m. ET.

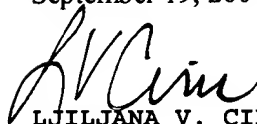
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel, can be reached on (703) 308-1272.

The NEW central official fax phone number is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

lvc

September 19, 2004


LJILJANA V. CIRIC
PRIMARY EXAMINER
ART UNIT 3753